CENTRAL MAINE POWER COMPANY
Site Location of Development Act // Natural Resources Protection Act
Upgrade of Transmission Corridor – 78 Municipalities

Statutory References

- Chapter 2 (11) – Rules Concerning the Processing of Applications and Other Administrative Matters, Application Requirements for Title, Right, or Interest
- NRPA Statute – Standards
- Chapter 335 – Significant Wildlife Habitat, General Standards
- Site Law – Standards for Development
- Chapter 375 – Site Law Rules, No Adverse Environmental Effect Standard

Please refer to pages 110-114 of the Department Order for a detailed description of the Special Condition for Third Party Inspection Program.

An applicant with an application that requires a pre-application meeting pursuant to this section shall hold a public informational meeting in accordance with section 13 of this rule prior to filing the application.

C. **Pre-submission meeting required.** A pre-submission meeting is required prior to submission to or acceptance by the Department of an application for the following:

(1) Any application for which a pre-application meeting was held; or

(2) Any application that has been previously rejected pursuant to section 11(B) of this rule.

D. **Waiver.** The requirement of a pre-application or pre-submission meeting may be waived by written notice from the Department and agreement by the applicant. The Department will agree to waive a pre-application or pre-submission meeting if the Department is satisfied that such a meeting would be of no value in achieving the purposes noted in section 10(A) of this rule. Waiver of a pre-application or pre-submission meeting does not waive the public informational meeting requirement of section 13 of this rule.

→ **11. Application requirements.**

A. **General requirements.** Application forms must be developed by the Commissioner and must require such information as the Commissioner deems necessary to make the findings required for each license.

When available, applications must include the "911" address of the project and Global Positioning System ("GPS") reference data. All GPS data must be in the form of Universal Transverse Mercator ("UTM") North American Datum of 1983 ("NAD83") coordinates of the proposed activity. Appropriate bureaus should be contacted to determine specific requirements for location and level of accuracy for GPS data.

An application from a corporation must be submitted in the corporation's registered corporate name, and must include either a *Certificate of Good Standing* or a statement signed by a corporate officer affirming that the corporation is in good standing.

Applications must be filed in care of the appropriate bureau, Maine Department of Environmental Protection, 17 State House Station, Augusta, ME 04333, or other office as provided by the Department.

B. **Acceptance of application.** The Commissioner shall, within 15 working days of receipt of an application by the Department, send written notice to the applicant that contains the date the application was accepted as complete for processing, or return the application and specify in writing the reasons it was returned. An applicant

whose application has been rejected shall attend a pre-submission meeting in accordance with section 10(C) of this rule before resubmitting an application for the same project or activity. If the Commissioner does not mail notice to the applicant of acceptance or rejection of the application within 15 working days, the application is deemed accepted as complete for processing on the 16th working day.

A determination that an application is accepted as complete for processing is based on staff's determination that the application fee has been paid pursuant to section 12 of this rule and that the application form is properly filled out and information is provided for each of the items required by the forms. It is not a review of the sufficiency of that information and does not preclude the Department from requesting additional information during processing or denying the application for failure to provide information necessary for the processing of that application.

C. **Projects requiring multiple licenses.** Upon filing of an application which involves an activity or project which will require more than one license from the Department, the Board or Commissioner may require the applicant to submit all other required applications before any such application will be accepted as complete for processing. The processing time for all such consolidated applications is the longest processing time associated with any of the applications. An applicant for a project requiring approval from more than two bureaus should contact the Commissioner's Office of Permit Assistance in the early phase of project development to arrange a departmental pre-application meeting and application coordination.

→ D. **Title, right or interest.** Prior to acceptance of an application for processing, an applicant shall demonstrate to the Department's satisfaction sufficient title, right or interest in all of the property that is proposed for development or use. An applicant must maintain sufficient title, right or interest throughout the entire application processing period. Methods of proving title, right or interest include, but are not limited to, the following:

(1) When the applicant owns the property, a copy of the deed(s) to the property must be supplied;

(2) When the applicant has a lease or easement on the property, a copy of the lease or easement must be supplied. The lease or easement must be of sufficient duration and terms, as determined by the Department, to permit the proposed construction and reasonable use of the property, including reclamation, closure and post closure care, where required. If the project requires a submerged lands lease from the State, evidence must be supplied that the lease has been issued, or that an application is pending and likely to be approved.

(3) When the applicant has an option to buy or lease the property, a copy of the option agreement must be supplied. The option agreement must be sufficient, as determined by the Department, to give rights to title, or a leasehold or easement

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of sufficient duration and terms to permit the proposed construction and use of the property including closure and post closure care, where required;

(4) When the applicant has eminent domain power over the property, evidence must be supplied as to the ability and intent to use the eminent domain power to acquire sufficient title, right or interest as determined by the Department;

(5) When the applicant has either a valid preliminary permit or a notification of acceptance for filing of an application for a license from the Federal Energy Regulatory Commission for the site which is proposed for development or use, a copy of that permit or notification must be supplied; or

(6) When the applicant has a written agreement with the landowner where said agreement permits the applicant to spread waste material that will be agronomically utilized by the landowner, a copy of that agreement must be supplied.

The Department may return an application, after it has already been accepted as complete for processing, if the Department determines that the applicant did not have, or no longer has, sufficient title, right or interest. No fees will be refunded if an application is returned for lack of continued title, right or interest.

E. **Signatory requirement.** Each application submitted to the Department must include the original signature of the applicant, or the applicant's duly authorized officer or agent, under the following certification:

"I certify under penalty of law that I have personally examined the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I authorize the Department to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein. I am aware there are significant civil and criminal penalties for submitting false information, including the possibility of fine and imprisonment."

If an application is signed by an agent, the application must include evidence of the agency signed by the applicant.

F. **Burden of proof.** An applicant for a license has the burden of proof to affirmatively demonstrate to the Department that each of the licensing criteria in statute or rule has been met. Unless otherwise provided by law, all applications, including renewal, amendment and transfer applications, are subject to the substantive laws and rules in effect on the date the application is accepted as complete for processing. For those matters that are not disputed, the applicant shall present sufficient evidence that the

§ 480-D. Standards

The department shall grant a permit upon proper application and upon such terms as it considers necessary to fulfill the purposes of this article. The department shall grant a permit when it finds that the applicant has demonstrated that the proposed activity meets the following standards set forth in subsections 1 to 9, except that when an activity requires a permit only because it is located in, on or over a community public water system primary protection area the department shall issue a permit when it finds that the applicant has demonstrated that the proposed activity meets the standards set forth in subsections 2 and 5.[5]

1. Existing uses. The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the department shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.[6]

2. Soil erosion. The activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

3. Harm to habitats; fisheries. The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

In determining whether there is unreasonable harm to significant wildlife habitat, the department may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

A. Avoiding an impact altogether by not taking a certain action or parts of an action;

B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;

C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment;

D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or

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section 2660-A on the effective date of this Act and applies for a permit for establishment or operation of the significant groundwater well prior to expiration of the water transport authorization, the person may continue to withdraw water until final agency action on the permit application."

[5] A permit is not required under the Maine Revised Statutes, Title 38, chapter 3, article 5-A for an activity located in, on or over a community public water system primary protection area until the effective date of the rules provided for PL 2007, ch. 353(14), unless a permit is otherwise required under the Maine Revised Statutes, Title 38, section 480-C. PL 2007, ch. 353(14).

[6] This paragraph beginning "In making a determination..." is effective April 18, 2008. See PL 2007, c. 661. For text of Title 35-A, section 3552, see Appendix B of this handout.

E. Compensating for an impact by replacing the affected significant wildlife habitat.

4. Interfere with natural water flow. The activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

5. Lower water quality. The activity will not violate any state water quality law, including those governing the classification of the State's waters.

6. Flooding. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

7. Sand supply. If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand or gravel within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system.

8. Outstanding river segments. If the proposed activity is a crossing of any outstanding river segment as identified in section 480-P, the applicant shall demonstrate that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.

9. Dredging.[7] If the proposed activity involves dredging, dredge spoils disposal or transporting dredge spoils by water, the applicant must demonstrate that the transportation route minimizes adverse impacts on the fishing industry and that the disposal site is geologically suitable. The Commissioner of Marine Resources shall provide the department with an assessment of the impacts on the fishing industry of a proposed dredging operation in the coastal wetlands. The assessment must consider impacts to the area to be dredged and impacts to the fishing industry of a proposed route to transport dredge spoils to an ocean disposal site. The Commissioner of Marine Resources may hold a public hearing on the proposed dredging operation. In determining if a hearing is to be held, the Commissioner of Marine Resources shall consider the potential impacts of the proposed dredging operation on fishing in the area to be dredged. If a hearing is held, it must be within at least one of the municipalities in which the dredging operation would take place. If the Commissioner of Marine Resources determines that a hearing is not to be held, the Commissioner of Marine Resources must publish a notice of that determination in a newspaper of general circulation in the area proposed for the dredging operation. The notice must state that the Commissioner of Marine Resources will accept verbal and written comments in lieu of a public hearing. The notice must also state that if 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources will hold a hearing. If 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources must hold a hearing. In making its determination under this subsection, the department must take into consideration the assessment provided by the Commissioner of Marine Resources. The permit must require the applicant to:

A. Clearly mark or designate the dredging area, the spoils disposal route and the transportation route;

B. Publish in a newspaper of general circulation in the area adjacent to the route the approved transportation route of the dredge spoils; and

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[7]Amendments to this section effective September 19, 1997 are affected by an application provision (PL 1997, c. 164, § 2) that provides:

Sec. 2. Application. This Act applies to permit applications filed with the Department of Environmental Protection on or after the effective date of this Act.
This section was later amended by Laws 1999, ch. 248, § 1.

C. Publish in a newspaper of general circulation in the area adjacent to the route a procedure that the applicant will use to respond to inquiries regarding the loss of fishing gear during the dredging operation.

10. Significant groundwater well. If the proposed activity includes a significant groundwater well, the applicant must demonstrate that the activity will not have an undue unreasonable effect on waters of the State, as defined in section 361-A, subsection 7, water-related natural resources and existing uses, including, but not limited to, public or private wells within the anticipated zone of contribution to the withdrawal. In making findings under this subsection, the department shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

§ 480-E. Permit processing requirements

The department shall process all permits under this article, except as provided in section 480-E-1, in accordance with chapter 2, subchapter I, and the following requirements.

1. Municipal notification. The department may not review a permit without notifying the municipality in which the proposed activity is to occur and considering any comments filed by the municipality within a reasonable period as established by the commissioner.

2. Water supply notification. If the resource subject to alteration or the underlying ground water is utilized by a community public water system as a source of supply, the applicant for the permit shall, at the time of filing an application, forward a copy of the application to the community public water system and the drinking water program of the Department of Health and Human Services by certified mail and the department shall consider any comments concerning the application filed with the commissioner within a reasonable period, as established by the commissioner.

3. Dredge spoils disposal. The commissioner may not accept an application for dredge spoils disposal in a coastal wetland unless the following requirements are met.

A. The applicant has collected and tested the dredge spoils in accordance with a protocol approved by the commissioner.

B. The applicant has published notice of the proposed route by which the dredged materials are to be transported to the disposal site in a newspaper of general circulation in the area adjacent to the proposed route.

C. The application has been submitted to each municipality adjacent to any proposed marine and estuarine disposal site and route.

Any public hearing held pursuant to this application must be held in the municipality nearest to the proposed disposal site.

4. Deferrals. When winter conditions prevent the department or municipality from evaluating a permit application, the department or municipality, upon notifying the applicant of that fact, may defer action on the application for a reasonable period. The applicant may not alter the resource area in question during the period of deferral.

5. Permission of record owner. The written permission of the record owner or owners of flowed land is considered sufficient right, title or interest to confer standing for submission of a permit application, provided that the letter of permission specifically identifies the activities being performed and the area that may be used for that purpose. The commissioner may not refuse to accept a permit application for any prohibited activity due to the lack of evidence of sufficient right, title or interest if the owner or lessee of land adjoining a great pond has made a diligent effort to locate the record owner or owners of flowed land and has been unable to do so.

D. Practicable. Available and feasible considering cost, existing technology and logistics based on the overall purpose of the project.

E. Subject wildlife. Wildlife species for which an area has been designated as significant wildlife habitat.

→ **3. General standards applicable to all activities**

A. Avoidance. An activity that would degrade the significant wildlife habitat, disturb the subject wildlife, or affect the continued use of the significant wildlife habitat by the subject wildlife, either during or as a result of the activity, will be considered to have an unreasonable impact if there is a practicable alternative to the project that would be less damaging to the environment.

B. Minimal alteration. Alteration of the habitat and disturbance of subject wildlife must be kept to the minimum amount necessary by, among other methods, minimizing the size of the alteration, the duration of the activity, and its proximity to the significant wildlife habitat and subject wildlife. Temporary structures must be used instead of permanent structures wherever possible when they would be more protective of the significant wildlife habitat or subject wildlife.

C. No unreasonable impact. Even if the activity has no practicable alternative, and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on protected natural resources or the subject wildlife. "Unreasonable impact" means that one or more of the standards of the NRPA at 38 M.R.S.A. § 480-D will not be met. In making this determination, the department considers the area of the significant wildlife habitat affected by the activity, including areas beyond the physical boundaries of the project and the cumulative effects of frequent minor alterations of significant wildlife habitats.

In order to meet the "harm to habitats; fisheries" standard at 38 M.R.S.A. § 480-D(3), the following requirements must be met.

(1) Unreasonable degradation, disturbance, or effect. The activity may not unreasonably degrade the significant wildlife habitat, unreasonably disturb subject wildlife, or unreasonably affect the continued use of the site by the subject wildlife.

A specific impact may require mitigation on-site or within close proximity to the affected significant wildlife habitat in order to lessen the severity of the impact. For example, altering a portion of a shorebird feeding area that is providing critical habitat for migratory shorebirds will likely require mitigation on-site to ensure that potential effects of the proposed activity are reduced. Mitigation methods may include the implementation of a buffer enhancement plan, deed restriction or other methods as determined by the department.

(2) Timing. The department may require that construction activities occur during a time when impacts on protected habitats, wildlife, fisheries and aquatic life will be minimized, such as outside of any critical nesting or breeding periods or similar critical periods, depending on the specific habitat and species. For example, an activity that could potentially cause sedimentation, such as excavation, may not be carried out during times of the year when fish are spawning. This requirement must be met unless the work can only practically be

completed at that time, and it is determined by the department that the impacts to the protected natural resource will be short term, and will not result in permanent harm to fish, wildlife, or marine resources.

D. Compensation. Compensation is the off-setting of a lost habitat function with a function of equal or greater value. The goal of compensation is to achieve no net loss of habitat functions and values. Every case where compensation may be required is unique due to differences in habitat type and geographic location. For this reason, the method, location, and amount of compensation work necessary is variable.

(1) When required. Compensation is required when the department determines that an impact to significant wildlife habitat will cause habitat functions or values to be lost or degraded as identified by the department. This determination may be based on the department's or the Department of Inland Fisheries & Wildlife's evaluation of the project, which may include an evaluation of appropriate information from other sources.

(2) Types of compensation. Compensation may include one or more of the following methods.

(a) A compensation project may be required by the department. Habitat compensation may include the restoration, enhancement or preservation of in-kind significant wildlife habitat or uplands or wetlands adjacent to such habitat. The site of the compensation project must provide significant wildlife habitat functions that might otherwise be degraded by unregulated activity, be located within the affected habitat or within similar habitat located within close proximity to the affected habitat, and the site must be preserved. If habitat priorities have been established at a local, regional or state level, the applicant shall consider those priorities in devising a compensation plan. Directional buffers may also be used in some instances to off-set impacts.

(b) In lieu of a compensation project, wholly or in part, payment of a compensation fee into the "Natural Resources Mitigation Fund" may be allowed by the department. The department is authorized to develop an in lieu fee compensation fee program for use in cases of impacts to certain types of significant wildlife habitat. See 38 M.R.S.A. § 480-Z(3).

(3) Compensation amounts. The amount of compensation required to replace lost functions depends on a number of factors including: the type of habitat to be altered; the size of the alteration activity; the functions of the habitat to be altered; and the type of compensation to be used. Compensation as described in Section 3(D)(2)(a) must meet the following ratios of square footage or acreage at a minimum (area restored, enhanced, created or preserved/area impacted), unless the department finds that a different ratio is appropriate to directly off-set habitat functions to achieve an equal or higher net benefit for habitat:

(a) 2:1 for restoration, enhancement, or creation;

(b) 8:1 for preservation, including adjacent upland or wetland habitat.

(4) Waiver. The department may waive the requirement for an assessment of habitat functions and values, compensation, or both. The department may waive the requirement for an assessment of the habitat if the department already possesses the information necessary to

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determine the functions and values of the area proposed to be altered. The department may waive the requirement for compensation if it determines that the impact to habitat functions and values from the activity will be insignificant.

E. Seasonal factors. When determining the significance of a wildlife habitat or impact from a proposed activity, seasonal factors and events that temporarily reduce the numbers and visibility of plants or animals, or obscure the topography and characteristics of a habitat such as a period of high water, snow and ice cover, erosion event, or drought are taken into account. Determinations may be deferred for an amount of time necessary to allow assessment of the resource without such seasonal factors.

4. Pre-application and pre-submission meetings

A. Purpose. The pre-application meeting between the applicant and the department is an opportunity for the applicant to determine the statutory and regulatory requirements that apply to a specific activity. The purpose of this meeting is to identify issues, processing times, fees and the types of information and documentation necessary for the department to properly assess the activity. The pre-submission meeting is an opportunity to review the assembled application to ensure that the necessary types of information have been included prior to filing the application.

NOTE: Activities requiring an NRPA permit are described at 38 M.R.S.A. § 480-C. Exemptions are described at 38 M.R.S.A. § 480-Q.

B. Submissions and scheduling. The following information and items must be submitted prior to scheduling a pre-application meeting with the department.

(1) Sketch plan. A sketch plan of the site showing the proposed activity, adjacent structures and features, property lines, and the significant wildlife habitat, with all distances and dimensions approximately to scale.

(2) Location map. A map showing the location of the proposed project site in relation to major roads and landmarks.

(3) Description of activity. A brief description of the activity including its dimensions.

(4) Description of significant wildlife habitat. A description of the significant wildlife habitat to be altered.

(5) Description of probable impacts. A description of probable impacts of the activity on the subject wildlife, significant wildlife habitat, and any other protected natural resources.

(6) Photographs. Photographs of the project area showing its characteristics.

5. Submission requirements. The applicant shall submit evidence that affirmatively demonstrates that the activity will meet the standards of the NRPA and this chapter including, but not limited to, the information listed below. Because of the site-specific nature of activities and potential impacts to significant wildlife habitat, the department may, on a case-by-case basis, require more or less information than specified in this section in order to determine whether the standards will be met.

only, a parcel of land is defined as all contiguous land in the same ownership provided that lands located on opposite sides of a public or private road are considered each a separate parcel of land unless that road was established by the owner of land on both sides of the road subsequent to January 1, 1970. A lot to be offered for sale or lease to the general public is counted, for purposes of determining jurisdiction, from the time a municipal subdivision plan showing that lot is recorded or the lot is sold or leased, whichever occurs first, until 5 years after that recording, sale or lease. [7][1997, c. 603, §2 (amd).]

6. Structure. A "structure" means:

A. Deleted. Laws 1993, c. 383, § 18 .[8]

B. Buildings, parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated that cause a total project to occupy a ground area in excess of 3 acres. Stripped or graded areas that are not revegetated within a calendar year are included in calculating the 3-acre threshold.

7. Storage facility. Repealed. Laws 1995, c. 704, Pt. A, § 6.

§ 482-A. Noise effect. Repealed. Laws 1993, c. 383, § 19.

§ 483. Notification required; board action; administrative appeals. Repealed. Laws 1989, c. 546, § 8 (effective July 10, 1989).

§ 483-A. Prohibition

1. Approval required. A person may not construct or cause to be constructed or operate or cause to be operated or, in the case of a subdivision, sell or lease, offer for sale or lease or cause to be sold or leased any development of state or regional significance that may substantially affect the environment without first having obtained approval for this construction, operation, lease or sale from the department.

2. Compliance with order or permit required. A person having an interest in, or undertaking an activity on, a parcel of land affected by an order or permit issued by the department may not act contrary to that order or permit.

§ 484. Standards for development

The department shall approve a development proposal whenever it finds the following.

1. Financial capacity. The developer has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards and with the provisions of this article. The commissioner may issue a permit under this article that conditions any site alterations upon a developer providing the commissioner with evidence that the developer has been granted a line of credit

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[7] The last sentence of this paragraph is affected by transition language. It provides that the provision, among others enacted by Laws 1993, ch. 383, does not apply to a development for which a permit was required under the Site Law prior to October 13, 1993. See Laws 1993, ch. 383, § 42. The transition language also provides, in part, that "Unless a subdivision has been proposed or created prior to the effective date of this Act:

A. A lot that is offered for sale or lease to the general public 5 years or more prior to the effective date of this Act, and still offered on that date, is no longer counted for purposes of determining jurisdiction as of that date;

B. A lot that is first offered for sale or lease to the general public within 5 years prior to the effective date of this Act, and still offered on that date, is no longer counted for purposes of determining jurisdiction more than 5 years after the date of the first offering;...". Laws 1993, ch. 383, § 42.

The "effective date of this Act" referred to is October 13, 1993.

[8] Deletion effective October 13, 1993. Deleted paragraph "A" read: "A building or buildings on a single parcel constructed or erected with a fixed location on or in the ground or attached to something on or in the ground which occupies a ground area in excess of 60,000 square feet or contains a total floor area of 100,000 square feet or more; or "... Laws 1993, ch. 383, § 18.

or a loan by a financial institution authorized to do business in this State as defined in Title 9-B, section 131, subsection 17-A or with evidence of any other form of financial assurance the board determines by rule to be adequate.

2. Traffic movement. Repealed. Laws 1999, c. 468, § 9 (effective June 30, 1999).

3. No adverse effect on the natural environment. The developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.

A. In making a determination under this subsection, the department may consider the effect of noise from a commercial or industrial development. Noise from a residential development approved under this article may not be regulated under this subsection, and noise generated between the hours of 7 a.m. and 7 p.m. or during daylight hours, whichever is longer, by construction of a development approved under this article may not be regulated under this subsection.

B. In determining whether a developer has made adequate provision for the control of noise generated by a commercial or industrial development, the department shall consider board rules relating to noise and the quantifiable noise standards of the municipality in which the development is located and of any municipality that may be affected by the noise.

C. Nothing in this subsection may be construed to prohibit a municipality from adopting noise regulations stricter than those adopted by the board.

D and E. Repealed. Laws 1995, c. 700, § 6.

F. In making a determination under this subsection regarding a structure to facilitate withdrawal of groundwater, the department shall consider the effects of the proposed withdrawal on waters of the State, as defined by section 361-A, subsection 7; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal. In making findings under this paragraph, the department shall consider both the direct effects of the proposed water withdrawal and its effects in combination with existing water withdrawals.

G. In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the department shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.[9]

4. Soil types. The proposed development will be built on soil types that are suitable to the nature of the undertaking.

4-A. Storm water management and erosion and sedimentation control. The proposed development, other than a metallic mineral or advanced exploration activity, meets the standards for storm water management in section 420-D and the standard for erosion and sedimentation control in section 420-C. A proposed metallic mineral mining or advanced exploration activity must meet storm water standards in department rules adopted to implement subsections 3 and 7. If exempt under section 420-D, subsection 7, a proposed development must satisfy the applicable storm water quantity standard and, if the development is located in the direct watershed of a lake included in the list adopted pursuant to section 420-D, subsection 3, any applicable storm water quality standards adopted pursuant to section 420-D.

5. Ground water. The proposed development will not pose an unreasonable risk that a discharge to

[9] Section 484(3)(G) is effective April 18, 2008. See PL 2007, ch. 661. The text of Title 35-A, section 3452 is contained in Appendix B of this handout.

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a significant ground water aquifer will occur.

6. Infrastructure. The developer has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal, required for the development, and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.

7. Flooding. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

8. Sand supply. Repealed. Laws 1993, c. 383, § 23. [10]

9. Blasting. Blasting will be conducted in accordance with the standards in section 490-Z, subsection 14 unless otherwise approved by the department.

10. Special provisions; grid-scale wind energy development.[11] In the case of a grid-scale wind energy development, the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

A. Will be designed and sited to avoid unreasonable adverse shadow flicker effects;

B. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities; and

C. Will provide significant tangible benefits as determined pursuant to Title 35-A, section 3454, if the development is an expedited wind energy development.

The Department of Labor, the Executive Department, State Planning Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority.

For purposes of this subsection, "grid-scale wind energy development," "primary siting authority," "significant tangible benefits" and "expedited wind energy development" have the same meanings as in Title 35-A, section 3451.

§ 484-A. Unlicensed pits; temporary licensing exemption

If a borrow pit was between 5 and 30 acres on October 1, 1993 and was not licensed as required under this article, its owner or operator is not required to obtain a license under this article if:

1. Notice of intent to comply. Pursuant to section 490-C, the owner or operator of the pit files a notice of intent to comply no later than:

A. April 1, 1995, for pits having reclaimed or unreclaimed areas that drain externally or having reclaimed or unreclaimed areas where internal drainage is achieved with berms or other structures; or

B. October 1, 1995, for pits where all reclaimed and unreclaimed lands are naturally internally drained; and

2. Adherence to compliance schedule. By October 1, 1996:

A. All reclaimed and unreclaimed areas that were not naturally internally drained on October 1, 1993 are stabilized or reclaimed;

B. All other conditions existing on October 1, 1993 comply with the performance standards under article 7; and

C. All activities conducted after filing a notice of intent to comply are conducted in compliance with article 7.

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[10] Repealed subsection read: "If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand within or to the sand dune system."

[11] Section 484(10) is effective April 18, 2008. See PL 2007, ch. 661.

(2) Evidence that the stormwater management system will take into consideration the upstream runoff which must pass over or through the development site. The system will be designed to pass upstream flows generated by a twenty-five year frequency through the proposed development without overloading the system or flooding areas not specifically planned for such flooding.

(3) Evidence that the design of piped or open channel systems will be based on a ten year flow frequency without overloading or flooding beyond channel limits. In addition, the areas expected to be flooded by runoff of a twenty-five year frequency will be designated, and no structures will be planned within such area.

(4) Evidence that, where permanent embankment-type storage or retention basins are planned, the basins will be designed in accordance with good engineering practice, such as outlined in the Soil Conservation Service Engineering Field Manual or other appropriate references.

(5) Evidence that rights-of-way or easements will be designated for all components of the stormwater management system lying outside of established street lines.

(6) Evidence that the developer will maintain all components of the stormwater management system until it is formally accepted by the municipality or a quasi-municipal district, or is placed under the jurisdiction of a legally created association that will be responsible for the maintenance of the system. The charter of such an association must be acceptable to the Board.

(7) Evidence that the stormwater management system will be fully coordinated with project site plans, including consideration of street patterns, pedestrian ways, open space, building siting, parking areas, recreational facilities, and other utilities, especially sanitary wastewater disposal facilities.

(8) When the construction of a development is to occur in phases, the planning of the stormwater management system should encompass the entire site which may ultimately be developed, and not limited to an initial or limited phases of the development.

NOTE: The following references may be of assistance to a developer in making the necessary computations and in designing the stormwater management system:

"Urban Hydrology for Small Watersheds", Technical Release No. 55, USDA, Soil Conservation Service, ~~University~~ of Maine, Orono, Maine.

"Water Resources Protection Measures in Land Development - A Handbook", Tourbier and Westmacott, University of Delaware Water Resources Center, Newark, Delaware.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that there will be no unreasonable effect on runoff/infiltration relationships.

→ **5. Erosion and Sedimentation Control**

A. Preamble. The Board recognizes the importance of controlling erosion and sedimentation to protect water quality and wildlife and fisheries habitat. Additionally, the Board considers topsoil to be a natural resource which should be properly managed. Control of erosion and sedimentation is a concern both during and after construction activities.

B. Scope of Review. In determining whether the developer has made adequate provision for controlling erosion and sedimentation, the Board shall consider all relevant evidence to that effect, such as evidence that:

(1) All earth changes will be designed, constructed, and completed in such a manner so that the exposed area of any disturbed land will be limited to the shortest period of time possible.

(2) Sediment caused by accelerated soil erosion will be removed from runoff water before it leaves the development site.

(3) Any temporary or permanent facility designed and constructed for the conveyance of water around, through, or from the development site will be designed to limit the water flow to a non-erosive velocity.

(4) Permanent soil erosion control measures for all slopes, channels, ditches, or any disturbed land area will be completed within fifteen calendar days after final grading has been completed. When it is not possible or practical to permanently stabilize disturbed land, temporary erosion control measures will be implemented within thirty calendar days of the exposure of soil.

(5) When vegetative cover will be established as a temporary or permanent erosion control measure:

(a) Plant species to be used and the seeding rates will take into account soil, slope, climate, and duration and use of the vegetative cover.

(b) Mulch will be provided at rates appropriate to ensure a minimum of soil and seed loss until an acceptable "catch" of seed is obtained.

(c) Reseeding will be done within a reasonable period of time if there is not an acceptable "catch".

(6) All development plans will incorporate building designs and street layouts that fit and utilize existing topography and desirable natural surroundings to the fullest extent possible.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that adequate provision will be made to control erosion and sedimentation, including information such as the following when appropriate:

(1) A comprehensive erosion and sedimentation control plan, designed in accordance with the "Maine Environmental Quality Handbook", the U.S.D.A., Soil Conservation Service's "Engineering Field Manual", or another appropriate reference, which includes the following information:

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(a) A description and location of the limits of all proposed construction activities which result in the disturbance of the land.

(b) A description and location of all existing and proposed on-site drainage.

(c) The timing and sequence of all proposed land disturbances.

(d) A description and location of all proposed temporary and permanent erosion and sedimentation control measures, including the timing and sequence of their completion.

(e) A proposed program for the maintenance of all erosion and sedimentation control facilities which will remain after the project is completed, including a designation of the responsible party.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer will make adequate provision to control erosion and sedimentation, such as requiring that:

(1) Erosion control devices be in place before the commencing of other construction activities.

(2) Construction activity be limited to certain times of the year, particularly when soil type, slope, and the extent of area to be stripped pose serious potential for erosion and sedimentation.

6. No Unreasonable Adverse Effect on Surface Water Quality

A. Preamble. The Board recognizes that developments have the potential to cause the pollution of surface waters through both point and non-point sources of pollution.

B. Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on surface water quality, the Board shall consider all relevant evidence to that effect, such as evidence that:

(1) The development or reasonably foreseeable consequences of the development will not discharge any water pollutants which affect the state classification of a surface water body (38 M.R.S.A. Section 363 et seq.).

(2) The best practicable treatment of point sources of water pollutants will be utilized.

(3) The total phosphorous concentrations in all tributaries to great ponds will not exceed the standard established in Department Regulation 583.1 as the result of the proposed development.

(4) Any effect on surface water temperature will be in compliance with all appropriate standards established in Department Regulations 582.1 - 582.8.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on surface water quality, including information such as the following, when appropriate:

(1) Where sewage disposal is to be handled off-site by a municipal or quasi-municipal sewage treatment facility, a letter from the authorized agent of the facility stating that there is adequate capacity to ensure satisfactory treatment.

(2) Evidence that a waste discharge license, as required by 38 M.R.S.A. Sections 413 et seq., has been or will be obtained.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will have no unreasonable adverse effect on surface water quality.

7. No Unreasonable Adverse Effect on Ground Water Quality

A. Preamble. The Board recognizes the importance of protecting ground water resources in order to promote the future health, safety, and welfare of the citizens of Maine through the maintenance of an adequate supply of safe drinking water.

B. Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on ground water quality, the Board shall consider all relevant evidence to that effect, such as evidence that:

(1) The development will not result in the existing ground water quality becoming inferior to the physical, biological, chemical, and radiological levels for raw and untreated drinking water supply sources specified in the Maine State Drinking Water Regulations, pursuant to 22 M.R.S.A. Section 601. If the existing ground water quality is inferior to the State Drinking Water Regulations, the developer will not degrade the water quality any further.

C. Rebuttable Presumption Against Disposal of Waste in Certain Areas. The Board operates under the rebuttable presumption that the storage and/or disposal of solid wastes, hazardous wastes, and leachable or liquid wastes, including petroleum products and septage, pose serious threats to public health, safety, and welfare through the potential pollution of the ground water when such storage and/or disposal occurs on or above sand and gravel aquifers or the recharge areas of sand and gravel aquifers.

NOTE: Maps of sand and gravel aquifers and their recharge areas are available for portions of the state from the Bureau of Geology, Department of Conservation, Augusta.

(1) An applicant seeking approval for a development which involves one or more of the activities specified above, must overcome this presumption by persuasive evidence that the development is unique in some way that allows for compliance with the intent of this subsection.

D. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on ground water quality, including information such as the following, when appropriate:

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(1) A comprehensive list, including physical and chemical characteristics and projected quantities of wastes to be disposed of or stored within the proposed development which may potentially contaminate the ground water.

(2) Methods for preventing ground water pollution as the result of the disposal and/or storage of wastes.

(3) An evaluation of the geological, hydrologic, and soils conditions of the development site.

(4) Data establishing background ground water quality.

(5) Proposed plan of action, and alternatives, to be followed in the event the proposed development results in ground water contamination.

E. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will have no unreasonable adverse effect on ground water quality, such as requiring that:

(1) A ground water monitoring program be established and reports be filed with the Department at designated intervals.

(2) Specified wastes not be disposed of or stored within the proposed development.

8. No Unreasonable Adverse Effect on Ground Water Quantity

A. Preamble. The Board recognizes the importance of maintaining an adequate supply of ground water for drinking purposes. The Board also recognizes that the depletion of ground water resources can result in the intrusion of salt water into potable ground water supplies and can affect the hydrologic characteristics of surface water bodies (peak flows, low flows and water levels) resulting in adverse effects on their assimilative capacity and recreational use, as well as on certain wildlife habitats. Additionally, new wells can cause a lowering of the ground water supply to the point where existing wells run dry, particularly during the late summer and early fall.

B. Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on ground water quantity, the Board shall consider all relevant evidence to that effect, such as evidence that:

(1) The quantity of water to be taken from ground water sources will not substantially lower the found water table, cause salt water intrusion, cause undesirable changes in ground water flow patterns, or cause unacceptable ground subsidence.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on ground water quantity, including information such as the following, where appropriate:

(1) Estimates of the quantity of ground water to be used by the proposed development.

(2) In the areas where salt water intrusion, the lowering of the ground water level, or land subsidence have been or can be reasonably be expected to be a problem, a report by a duly qualified person addressing the potential effects of ground water use by the proposed development.

D. Terms and Conditions. The Board may, as a term or condition of approval establish any reasonable requirement to ensure that there will be no unreasonable adverse effect on ground water quantity, such as requiring that:

(1) A development obtain its water from a surface water source, public community supply, or utility.

(2) Wells in the surrounding area be monitored to determine the effect of the development on ground water levels.

(3) People in the surrounding area, whose wells are adversely affected by the development, be provided with new wells or another source of potable water for their use and consumption.

→ **9. Buffer Strips**

A. Preamble. The Board recognizes the importance of natural buffer strips in protecting water quality and wildlife habitat. The Board also recognizes that buffer strips can serve as visual screens which can serve to lessen the visual impact of incompatible or undesirable land uses. The width and nature of buffer strips, if required, shall be determined by the Board on a case-by-case basis.

B. Scope of Review. In determining whether the developer has made adequate provision for buffer strips, when appropriate, the Board shall consider all relevant evidence to that effect, such as evidence that:

(1) Water bodies within or adjacent to the development will be adequately protected from sedimentation and surface runoff by buffer strips.

(2) Buffer strips will provide adequate space for movement of wildlife between important habitats.

(3) Buffer strips will shield adjacent uses from unsightly developments and lighting.

NOTE: The following GUIDELINES should be considered in establishing visual buffer strips.

(1) Plant materials used in the screen planting will be at least four feet high when planted and be of such evergreen species as will produce ultimately a dense visual screen at least eight feet high. Alternatively, a six-foot high wooden fence, without openings wider than 1", may be substituted.

(2) The screen will be maintained permanently, and any plant material which does not live will be replaced within one year.

(3) Screen planting will be so placed that at maturity it will be no closer than three feet away from any street or property line.

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(4) The screen will be broken only at points of vehicular or pedestrian access.

(5) Fencing and screening will be so located within the developer's property line to allow access for maintenance on both sides without intruding upon abutting properties.

C. **Excavations for Sand, Gravel, Clay, Silt, Topsoil, or Rock** -- Buffer strips associated with an excavation for sand, gravel, clay, silt, topsoil, or rock must meet the buffer strip standards specified in Performance Standards for Excavations, 38 M.R.S.A. § 490-D, and Performance Standards for Quarries, 38 M.R.S.A. § 490-Z. These standards apply in lieu of Section 9(B) (1)-(3).

A gravel pit previously licensed under the Site Location of Development Law, 38 M.R.S.A § 484, may apply for a modification of the buffer strip requirements in such a permit. The Department may approve such modification if the buffer strip at least meets the minimum standards of §§ 490-D and 490-Z and the proposed excavation will not result in an unreasonable adverse impact on the natural environment.

D. **Submissions**. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that adequate provision of buffer strips, when appropriate, will be made, including information such as the following:

(1) The location and width of all natural buffer strips to be retained.

(2) The nature, location, width, and height of all vegetative buffer strips or architectural screens to be established.

(3) Legal provisions for the maintenance of all buffer strips and architectural screens.

E. **Terms and Conditions**. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has made adequate provision for the establishment of buffer strips, such as requiring:

(1) The maintenance of existing vegetation as a natural buffer strip, which shall remain as a permanent feature of the landscape.

(2) The incorporation of buffer strip maintenance into deed covenants in projects where deed transfers of property to the general public are contemplated.

(3) Written permission of the Department of Environmental Protection for activities which may adversely affect a body of water or wildlife habitat protected by a natural buffer strip, such as: removal of live trees, stump and hot systems, and the displacement of rocks, topsoil and similar activities which would cause or allow increased soil erosion.

(4) The establishment of particular species of vegetation.

(5) The use of particular materials, colors, and styles in the construction of architectural screens.

10. Control of Noise

(1) Structures within the proposed development will not block access to direct sunlight to structures utilizing solar energy through active or passive systems.

C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that a proposed development will not block access to direct sunlight.

14. No Unreasonable Effect on Scenic Character

A. Preamble. The Board considers scenic character to be one of Maine's most important assets. The Board also feels that visual surroundings strongly influence people's behavior.

B. Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on the scenic character of the surrounding area, the Board shall consider all relevant evidence to that effect, such as evidence that:

(1) The design of the proposed development takes into account the scenic character of the surrounding area.

(2) A development which is not in keeping with the surrounding scenic character will be located, designed and landscaped to minimize its visual impact to the fullest extent possible.

(3) Structures will be designed and landscaped to minimize their visual impact on the surrounding area.

NOTE: The following are GUIDELINES for the landscaping of parking lots, which are structures pursuant to 38 M.R.S.A. Section 482(6) (B).

(a) Lighting will be shielded from adjacent highways and residential areas.

(b) Curbed planting strips will be utilized in parking areas of 2 acres or more. Planting strips will be a minimum of ten (10) feet wide and spaced between every second double bay parking aisle or 200 feet, whichever is less.

(c) When the parking lots are adjacent to a residential use, landscaping and/or architectural screens will be utilized to provide an effective perimeter separation area between property lines and the edge of the pavement and/or structures. There will be a minimum setback of fifteen (15) feet from the property line. The Board may require a similar provision when the parking lot is adjacent to other land uses.

(d) Planting and maintenance program specifications will be developed to provide the earliest establishment of landscape materials and their maintenance.

(e) Planting specifications:

(i) Shrubs will be planted with a 24" minimum size for those specified by spread.

(ii) Shrubs will be planted with a 36" minimum size for those specified by height.

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(iii) Shade trees will be highcrowned species with ascending or lateral branching habit indigenous to the area, tolerant to existing soils and urbanized conditions, two-inch minimum caliper measured six inches up from the base, and planted a maximum of 30' on center.

(iv) Flowering and evergreen trees will be a minimum of 7' tall and planted a maximum of 20' on center.

(v) Selections for ground cover will reflect the project's function, expected foot traffic, exposure, and maintenance program.

(f) Provisions will be made to supply water to planted islands and other vegetated areas.

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(4) The plans for the proposed development provide for the preservation of existing elements of the development site which contribute to the maintenance of scenic character.

C. **Submissions**. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on the scenic character of the surrounding area, including information such as the following, when appropriate:

(1) Sketches of the proposed development indicating how the development fits into the scenic character of the area.

(2) Landscaping plans for minimizing the visual impact of the parking lots, mining operations and other types of developments.

D. **Terms and Conditions**. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will have no unreasonable adverse effect on scenic character, such as requiring that:

(1) Illumination of the development be limited.

(2) Vegetative or architectural screens be established.

15. Protection of Wildlife and Fisheries

A. **Preamble**. The Board recognizes the need to protect wildlife and fisheries by maintaining suitable and sufficient habitat and the susceptibility of certain species to disruption and interference of lifecycles by construction activities.

B. **Scope of Review**. In determining whether the developer has made adequate provision for the protection of wildlife and fisheries, the Board shall consider all relevant evidence to that effect, such as evidence that:

(1) A buffer strip of sufficient area will be established to provide wildlife with travel lanes between areas of available habitat.

(2) Proposed alterations and activities will not adversely affect wildlife and fisheries lifecycles.

(3) There will be no unreasonable disturbance to:

(a) High and moderate value deer wintering areas;.

(b) Habitat of any species declared threatened or endangered by the Commissioner, Maine Department of Inland Fisheries and Wildlife or the Director of the U.S. Fish and Wildlife Service;

(c) Seabird nesting islands;

(d) Significant vernal pools;

(e) High and moderate value waterfowl and wading bird habitat; and

(f) Shorebird nesting, feeding, and staging areas.

C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that the developer has made adequate provision for the protection of wildlife and fisheries, including information such as the following, when appropriate:

(1) The location of natural buffer strips and adequate provision for their maintenance.

(2) Plans to mitigate adverse effects on wildlife and fisheries through means that at a minimum include, but are not limited to, design considerations, pollution-abatement practices, the timing of construction activities, and on-site or off-site habitat improvements or preservation.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that a developer has made adequate provision for the protection of wildlife and fisheries.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

AUTHORITY: 38 M.R.S.A., Section 343

EFFECTIVE DATE: November 1, 1979
Section 10 Amended: November 21, 1989
Section 9 Amended: June 12, 1991
Section 9 Amended: September 22, 2001
Section 15 Amended: January 18, 2006

BASIS STATEMENT

These regulations are intended to explain and clarify the meaning of the No Adverse Environmental Effect Standard of the Site Location Law (38 M.R.S.A., Section 484(3)) and to set out the duties, powers,